

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Final Office Action dated November 16, 2009. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-38 are pending in the Application. Claims 1, 36, and 38 are independent claims.

In the Office Action, claims 1-10, 13-15 and 17-37 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 3,725,658 to Stanley ("Stanley") in view of U.S. Patent No. 4,914,720 to Knodle ("Knodle"). Claims 11 and 12 are rejected under 35 U.S.C. §103(a) over Stanley in view of Knodle in further view of U.S. Patent No. 4,849,172 to Yafuso ("Yafuso"). Claim 16 is rejected under 35 U.S.C. §103(a) over Stanley in view of Knodle in further view of U.S. Patent No. 4,861,727 to Hauenstein ("Hauenstein"). Claim 38 is rejected under 35 U.S.C. §103(a) over Stanley in view of Knodle in further view of U.S. Patent No. 5,315,993 to Alcala ("Alcala"). These rejections are respectfully traversed. It is respectfully submitted that claims 1-38 are allowable over Stanley in view of Knodle alone and in any combination with Yafuso, Hauenstein, and Alcala for at least the following reasons.

Claim 1 is amended to positively recite "a second electromagnetic radiation" to address a concern raised in the Office Action at page 4, lines 6-8. Further, claim 1 is amended to clarify its recitation of the respiratory flow component as "comprising a replaceable luminescable element having a luminescable composition". Support for this recitation is found at paragraphs 0042 and 0115 of the specification and Figures 7-10.

Additionally, claim 1 is amended to clarify that "the respiratory flow component is adapted to be removably securable to the transducer only in a correct orientation". Support for this recitation is found in paragraphs [0043] of the specification of the present application.

It is respectfully submitted that these recitations of claim 1 and similarly of claims 36 and 38 are not found in the Figures and specification of Stanley. In the embodiments shown in Stanley's FIG. 2, Stanley describes a tube 24 coated on its inside surface with a sensor film 25. No teaching, disclosure, or suggestion of a replaceable luminescable element is found in Stanley. Knodle and Alcala similarly do not teach, disclose, or suggest a replaceable luminescable element as substantially recited in each of claims 1, 36 and 38.

It is respectfully submitted that the apparatus of claim 1 is not anticipated or made obvious by the teachings of Stanley and Knodle. For example, Stanley in view of Knodle do not teach, disclose or suggest, amongst further patentable elements, (illustrative emphasis added) "a respiratory flow component comprising a replaceable luminescable element having a luminescable composition; and a transducer comprising ... a detector positioned adjacent to the radiation source so as to be located on a same side of the respiratory flow component as the radiation source to sense a second electromagnetic radiation emitted by said luminescable composition and to produce a signal indicative of an intensity of said at least one wavelength emitted by said luminescable composition, wherein the respiratory flow component is adapted to be removably securable to the transducer only in a correct orientation" as recited in claim 1, and as similarly recited in each of claims 36 and 38. Yafuso and Hauenstein are introduced for allegedly showing elements of the dependent claims and as such, do nothing to cure the deficiencies of Stanley in view of

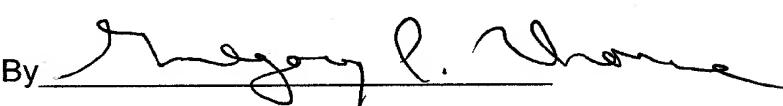
Knodle and Alcala.

Based on the foregoing, the Applicants respectfully submit that independent claims 1, 36, and 38 are patentable over Stanley, Knodle, and Alcala and notice to this effect is earnestly solicited. Claims 2-35 and 37 respectively depend from one of claims 1 and 36 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims.

In addition, Applicants deny any statement, position, or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

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